



NONRULE POLICY DOCUMENT

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Title: Contained-in Policy Guidance for RCRA

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Date Originally Effective: October 17, 2002

Dates Revised: None

Other Policies Repealed or Amended: None

Brief Description of Subject Matter: Use of RISC standards to remove contaminated environmental media from regulation as a RCRA hazardous waste or solid waste.

Citations Affected: 40 CFR 268, 329 IAC 10, 329 IAC 3.1

This nonrule policy document is intended solely as guidance and does not have the effect of law or represent formal Indiana Department of Environmental Management (IDEM) decisions or final actions. This nonrule policy document shall be used in conjunction with applicable laws. It does not replace applicable laws, and if it conflicts with these laws, the laws shall control. This nonrule policy document may be put into effect by IDEM thirty days after presentation to the appropriate board and after it is made available for public inspection and comment, pursuant to IC 13-14-1-11.5. If the nonrule policy is presented to more than one board, it will be effective thirty days after presentation to the last. IDEM will submit the policy to the Indiana Register for publication. Revisions to the policy will follow the same procedure of presentation to the board and publication.

Summary

The U.S. EPA "contained-in policy" states that soil and groundwater which does not contain "listed" RCRA hazardous waste, and which is not otherwise hazardous, is not subject to RCRA regulation. A determination as to whether or not "listed" waste is "contained-in" soil or groundwater may be made by authorized states based on whether constituents from listed waste are below health-based levels. It is IDEM's position that contamination levels specified in the *RISC* (*Risk Integrated System of Closure*) system developed by IDEM represent appropriate health-based levels for determining if soil or groundwater contain "listed" hazardous waste. This NPD is applicable to soil and groundwater which is generated and subsequently managed, and does not replace or alter requirements for closure or clean-ups found in various regulatory authorities. Residential RISC default levels must be used for material that will be managed as non-contaminated (e.g. used as fill, disposed on-site). Industrial default levels may be used for soil which will be managed off-site in a permitted disposal facility (e.g. municipal solid waste) or any unit subject to Clean Water Act regulations. This NPD is not applicable to sediment. This NPD is not applicable to soil or groundwater that will be placed in an ecologically or geologically susceptible area or a wellhead protection area. Consistent with EPA policy, a written

Acontained-in@ determination must be obtained from IDEM. Implementation issues and background are discussed below.

Discussion

This guidance is intended to clarify the application of RCRA hazardous waste regulations to environmental media (i.e. soil and groundwater). Environmental media that has become contaminated with “listed” hazardous wastes must be managed as hazardous wastes when generated (e.g. exhumed for discard during remedial activities) because--and only as long as--they contain “listed” waste(s). EPA Regions and authorized states, including Indiana, may apply the contained-in policy to determine site-specific, media-specific and contaminant-specific health-based levels, such that if the concentration of the hazardous constituents in the environmental media fall below the specified health-based levels, the environmental media may be determined to no longer contain hazardous waste. Such Acontained-in@ determinations@ may be made by an authorized state before or after treatment of the contaminated environmental media and may include consideration of site-specific exposure pathways (e.g., potential for human exposure, soil permeability, leaching potential to groundwater). It should be noted that any treatment of hazardous waste might require a permit. For further information on this issue, see the IDEM guidance document *Treatment of Hazardous Waste On-site By Generators* at <http://www.IN.gov/idem/land/pubsforms/guidance.html>, or contact staff of the RCRA permit or compliance programs at IDEM.

It is IDEM-s position that the contaminant levels used in Table A, Default Closure Levels, of the *RISC Technical Resource Guidance Document*, represent an appropriate basis for making risk-based Acontained-in@ determinations for soil and groundwater that will be disposed. Contaminant levels used in Table A were generated using conservative models and default assumptions concerning exposure and site conditions. Because the RISC levels are based only on human health risk, it is not appropriate to use RISC default levels for media that will be placed in ecologically susceptible areas. Karst type geological areas also fall outside RISC default assumptions, as do wellhead protection areas. If applicable, the media must also meet all Land Disposal Restriction (LDR) treatment standards (including treatment of underlying hazardous constituents as defined at 40 CFR ' 268.2(i) for material that exhibits a characteristic in addition to containing a listed waste). A discussion of management conditions follows.

Conditions

Use of Residential Default Levels

For generated soil and groundwater which would be considered a “listed” waste and are going to be deposited on-site, used as fill, or managed in any way other than off-site disposal at a permitted facility, the Residential levels in Table A must be used. Contaminated soil and groundwater are not subject to RCRA regulatory management requirements if they have been generated with, or treated to, constituent levels:

- (1) below chemical of concern (COC) concentration levels in Table A, Residential Levels;
- (2) below characteristic levels;
- (3) meeting all LDR requirements when applicable; and
- (4) will not be managed in an ecologically or geologically susceptible (e.g. wetlands or karst) area or a wellhead protection area.

Under solid waste rules found at 329 IAC 10, contaminated soil is potentially regulated as a solid waste even if it exits the RCRA hazardous waste regulations. However, using the above criteria for an exit level from hazardous waste regulations, it is also IDEM's position that soil which meets Residential levels in Table A is considered uncontaminated for the purposes of 329 IAC 10-3-1 (1), which is an exclusion from regulation under the provisions of the solid waste rule.

Use of Commercial/Industrial Default Levels

Depending on how soil is managed, it is also possible to use the Commercial/Industrial default levels in RISC Table A as an exit level from RCRA regulation. If soil is disposed at a permitted facility (Subtitle C or D), it is appropriate to use the Direct Commercial/Industrial default levels in Table A as the basis for a contained-in determination. Soil no longer contains hazardous waste and is not subject to RCRA regulatory management requirements if it has been disposed of in a RCRA subtitle C or D landfill cell and has been generated with, or treated to, constituent levels:

- (1) below chemical of concern (COC) concentration levels in Table A, Commercial/Industrial Levels;
- (2) below Characteristic levels; and
- (3) meeting LDR requirements if applicable, including alternative standards established for contaminated soils (40 CFR 268.49).

It is also appropriate to use the groundwater Commercial/Industrial default levels in RISC Table A as an exit level for groundwater that is managed in any unit subject to Federal Clean Water Act regulations.

Written Determination Approval Required

Due to the complexity of establishing the appropriate exit level from RCRA regulations, and the need to be consistent with EPA policy, any facility that intends to demonstrate that media no longer contains a listed hazardous waste must obtain a written contained-in determination approval from IDEM. Please contact the staff of the Hazardous and Industrial Waste Compliance Program, Office of Land Quality, at 317-308-3133.

Other Options

On a case-by-case basis, facilities may develop site specific risk analyses to establish non-default exit levels.

References

If you need additional information, or have any questions or concerns, please contact the staff of the Hazardous and Industrial Waste Compliance program, Office of Land Quality, at 317-308-3133. The IDEM toll-free telephone number (when calling within Indiana) is 1-800-451-6027. Other references:

RISC (Risk Integrated System of Closure) Technical Resource Guidance Document available at <http://www.IN.gov/idem/land/pubsforms/guidance.html>

Management of Remediation Waste Under RCRA, EPA Publication Number 530-F-98-026, available at http://www.epa.gov/epaoswer/hazwaste/ca/resource/guidance/remwaste/pspd_mem.pdf